IN THE

Supreme Court of the United States

OCTOBER TERM, 1929

No. 530

UNITED STATES OF AMERICA, *Petitioner*

v.

THE EQUITABLE TRUST COMPANY OF NEW YORK; Murray, Aldrich & Roberts; Edward J. Patterson; J. Frederick Eagle; William Greenough; Sherman Day; Carroll G. Walter and Dodge L. Marks, Composing the Firm of Patterson, Eagle, Greenough & Day; Rayburn L. Foster and R. B. F. Hummer, Composing the Firm of Hummer & Foster; Almond D. Cochran, Surviving Partner of the Firm of Cochran & Ellison; C. B. McCrory and Dudley C. Monk, Composing the Firm of McCrory & Monk; and Elmer S. Bailey, Individually and as *Prochein Ami* of Jackson Barnett.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE EQUITABLE TRUST COMPANY OF NEW YORK AND MURRAY, ALDRICH & ROBERTS

First, on behalf of Murray, Aldrich & Roberts, who were the attorneys for The Equitable Trust Company of New York before the District Court and the Cir-

cuit Court of Appeals, it should be said that they were granted no allowance on account of their services as attorneys or otherwise, and have not received a cent out of the fund in litigation or otherwise.

Second, on behalf of The Equitable Trust Company of New York it should be said that after the entry of the judgment of the Circuit Court of Appeals on July 22, 1929, and after the decree of the District Court was entered upon the mandate of the Circuit Court of Appeals on the 19th day of September 1929, The Equitable Trust Company of New York endeavored to comply with said judgment and decree by turning over the fund in its hands less the amounts required to be paid to the attorneys and the *prochein ami*, but the Office of the Secretary of the Interior advised it that the Secretary of the Interior was not prepared to accept delivery thereof at that time. At the same time and on or about September 27, 1929 it paid to the attorneys and to the *prochein ami* the amounts required to be paid to them by said judgment and decree. Before doing so, the attorneys for The Equitable Trust Company of New York advised the Assistant United States District Attorney in charge of the case that these payments were about to be made, and no objection was offered and no intimation given that an application for certiorari would be made. No stay of execution or supersedeas was applied for or obtained either from the Circuit Court of Appeals or from a Justice of this Court before certiorari was granted. Therefore, if this Court should hold that the payments to the attorneys and the *prochein ami*

were improper or excessive, the mandate should direct that the attorneys and the *prochein ami* to whom payment was made as aforesaid should refund the same to the Secretary of the Interior.

Respectfully submitted,

HARRISON TWEED,
Counsel for The Equitable Trust Company of New York and Murray, Aldrich & Roberts.